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NO.

Supreme Court, U.S.  
FILED

NOV 16 1990

JAMES F. SPANIOL, JR.

IN THE  
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

MARIE M. MCMAHON

PETITIONER,

VS.

CHARLES G. ASCHMANN, JR.

RESPONDENT.

RESPONDENT'S REPLY TO PETITION  
FOR WRIT OF CERTIORARI

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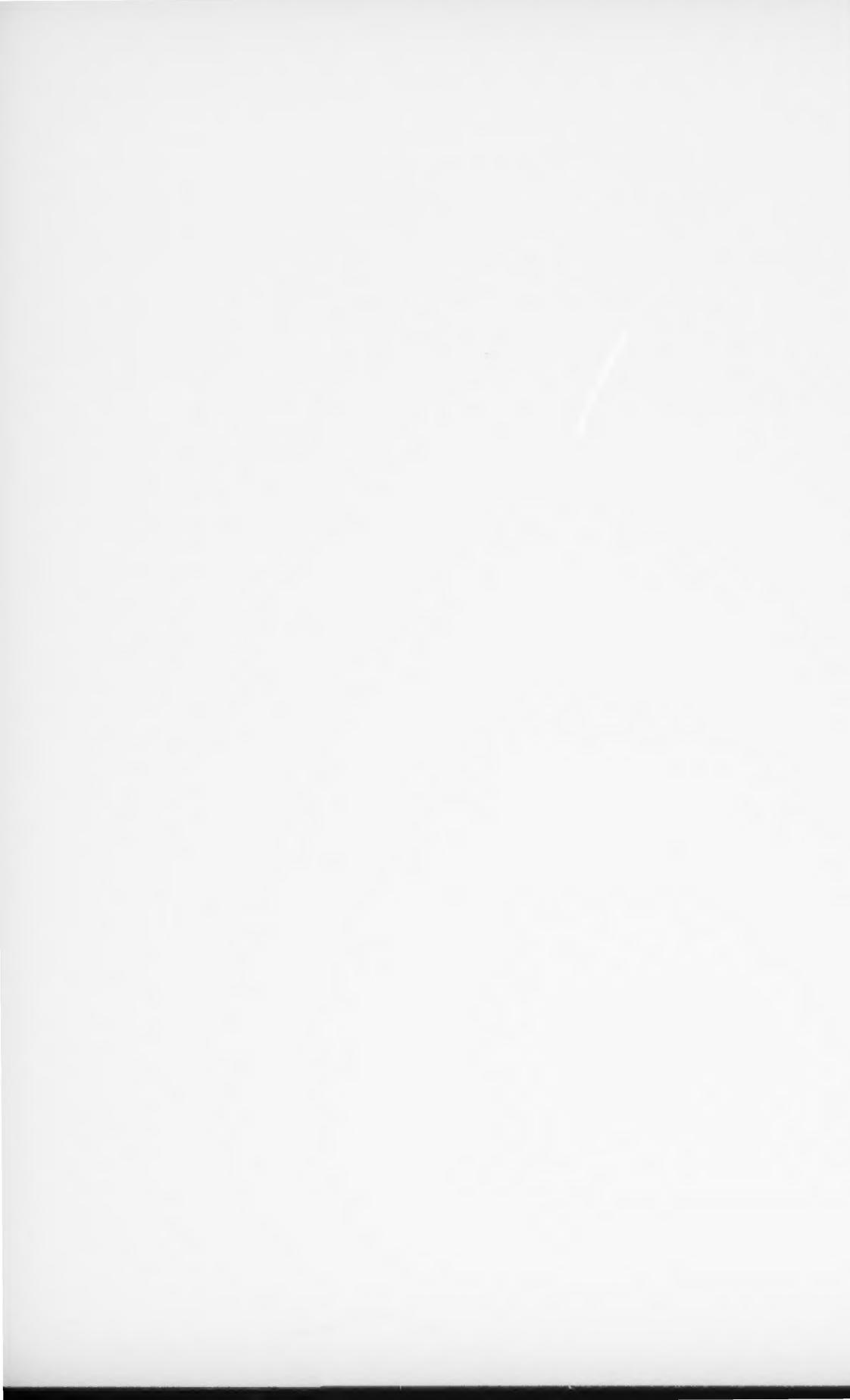
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COUNTER-STATEMENT OF THE QUESTIONS PRESENTED

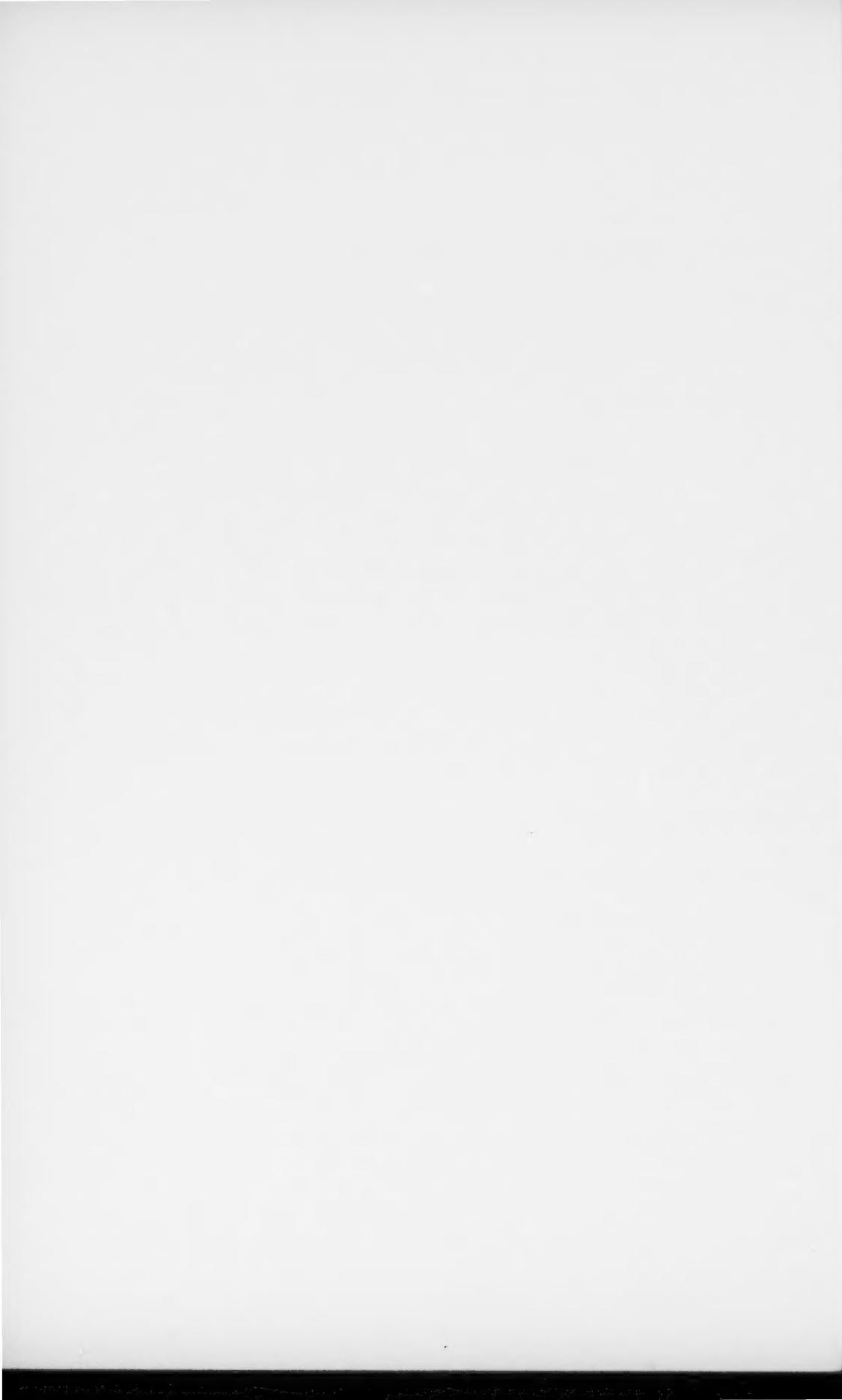
Is the Petitioner foreclosed from asserting that she has been deprived of her civil rights, pursuant to 42 U.S.C. Sections 1983 and 1985, when the civil right of which petitioner was allegedly deprived is not a right secured by the United States Constitution?

Answered in the affirmative by the respondent hereto.



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## COUNTER-STATEMENT OF THE CASE

On June 5, 1987, Respondent filed a civil action in the Circuit Court of Morgan County, West Virginia, to register and enforce a judgment previously obtained in the Commonwealth of Virginia, alleging, generally, that the judgment was entitled to full faith and credit under the United States Constitution. The Petitioner filed an answer and counterclaim, which counterclaim alleged various causes of action for Respondent's alleged failure to perform contractual duties alleged to be owed Petitioner, and alleged a violation of 42 U.S.C. Sections 1983 and 1985. This allegation was based upon an alleged violation of Petitioner's right to a trial by jury in the initial Virginia civil action, which violation allegedly occurred when the Virginia Court granted a motion for directed verdict.



On July 27, 1988, the Circuit Court of Morgan County, West Virginia, granted a summary judgment in favor of Respondent on all issues raised in the complaint. On October 20, 1988, the Circuit Court of Morgan County, West Virginia granted a summary judgment in favor of Respondent on all issues raised in the counterclaim, except that of the alleged violation of 42 U.S.C. Sections 1983 and 1985. On September 6, 1989, the West Virginia Supreme Court of Appeals refused to hear the appeal of Petitioner from the order of October 20, 1988.

On October 31, 1989, the Circuit Court of Morgan County, West Virginia, granted a summary judgment in favor of Respondent on the issues concerning 42 U.S.C Sections 1983 and 1985 on the grounds that the Petitioner was not entitled to a Federal right to a trial by jury in a state civil proceeding, and further, that the granting of directed verdict in a



state civil action did not, therefore, rise to the level of a violation of 42 U.S.C Sections 1983 and 1985. The Court further held that the failure to appeal the decision of the Virginia court foreclosed Petitioner's right to raise the issue in an action predicated upon the Full Faith and Credit Clause of the United States Constitution. On July 9, 1990, the West Virginia Supreme Court of Appeals refused to hear Petitioner's appeal from the Order of October 30, 1989. Petitioner now appears before this Honorable Court in the instant matter.



## SUMMARY OF ARGUMENT

The Petitioner's basic claim is that she was deprived of her Federal constitutional right to a jury trial when a judge in a state civil proceeding granted a motion for directed verdict at the end of presentation of evidence. This issue was raised for the first time when the Respondent registered his judgment in a sister state for enforcement proceedings. Petitioner did not appeal the granting of a directed verdict in the original proceeding. There is no Federal constitutional right to a jury trial in state civil proceedings; therefore, Petitioner could not have been deprived of any such right. Further, Petitioner's failure to appeal the order of the original court, issuing a directed verdict, forecloses her from raising this issue after the original judgment has become final.



## ARGUMENT

The Petitioner is foreclosed from asserting that she has been deprived of her civil rights, pursuant to 42 U.S.C. Sections 1983 and 1985, when the civil right which Petition was allegedly deprived is not a right secured by the United States Constitution.

The Petitioner has asserted that she was deprived of her constitutional right to a trial by jury when the state court, in the original action from which this matter arose, directed a verdict in favor of the Respondent, and Petitioner further alleges that this action violated her civil rights pursuant to 42 U.S.C. Sections 1983 and 1985.

42 U.S.C. Section 1983 provides:

### Section 1983 - Civil Action for deprivation of rights.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction of thereof to the deprivation of any rights,



privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered a statute of the District of Columbia.

Thus, in order for Petitioner to have any claim for redress, she must show that she has been deprived of a right secured by the Constitution.

The Seventh Amendment to the United States Constitution commands that in suits at common law, the right to a trial by jury shall be preserved and that no fact tried by a jury shall be otherwise re-examined by any court of the United States. However, the Seventh Amendment's guarantee of the right to a trial by jury is not applicable to the states in a civil action:

Two propositions as to the operation and effect of the Seventh



Amendment are as conclusively determined as is that concerning the nature and character of the jury required by that Amendment where applicable. (a) That the first ten Amendments, including of course the Seventh, are not concerned with state action and deal only with Federal action [cites omitted]. And, as a necessary corollary, (b) that the Seventh Amendment applies only to proceedings in courts of the United States and does not in any manner whatever govern or regulate trials by jury in state courts or the standards which must be applied concerning same. [cites omitted]. So completely and conclusively have both of these principles been settled, so expressly have they been recognized without dissent or question almost from the beginning in the accepted interpretation of the Constitution, in the enactment of laws of by Congress and proceedings in the Federal courts, and by state constitutions and state enactments and proceedings in state courts, that it is true to say that to conceded [sic] that they are open to contention would be to grant that nothing whatever had been settled as to the power of state and Federal governments or the authority of state and Federal courts and their mode of procedure from the beginning.

Minneapolis and St. Louis Railroad Company v.

Bombalis, Administrator of Nanos, 241 U.S. 211



(1916). Further, in the case of Dyson v. Sposeep, 637 F. Supp. 616 (N.D. Ind. 1986), wherein the Plaintiff alleged that he was deprived of his constitutional right to a jury trial when a judge granted a summary judgment, the court stated:

Moreover, the Seventh Amendment's requirement of civil trials binds the federal government and not the states; there is no federal constitutional right to a trial by jury in a state civil action. Letendre v. Fugate, 701 F. 2d 1093 (4th Cir. 1983) ("The Seventh Amendment's right to trial by jury in the federal courts has not been extended to the states through the Fourteenth Amendment.")...

Id. at 621.

It is thus clear that there is no Federal civil right to a jury trial guaranteed by the United States Constitution to litigants in state courts. In addition, it should be noted that the Petitioner, rather than appealing the decision of the Virginia court, granting the



directed verdict, instead attempts to collaterally challenge the directed verdict in an action to enforce the Virginia judgment. If the Petitioner could have suffered no deprivation of her constitutional rights, and further failed to raise the issue in the rendering court by appeal, it equally follows that there can be no recovery under 42 U.S.C. Section 1983.



CONCLUSION

Wherefore, it is the conclusion of the Respondent that no Federal rights exist to a trial by jury in a state civil proceeding, and that the Writ of Certiorari filed by the Petitioner herein should be denied.

Dated: November 15, 1990.

CHARLES G. ASCHMANN, JR.  
BY COUNSEL

Respectfully submitted,

MARTIN & SEIBERT

By:

  
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**CERTIFICATE OF SERVICE**

I, Clarence E. Martin, III, attorney for the Respondent, and a member of the Bar of the Supreme Court of the United States, hereby certify that on November 15, 1990 I served a copy of the foregoing Respondent's Reply to Petition for Writ of Certiorari on Marie M. McMahon, the Petitioner herein, by delivering a copy thereof to her at her address of 103 Pratt Street, Berkeley Springs, West Virginia, 25411.

Dated November 15, 1990.



Clarence E. Martin, III